

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ARTURO TORRES OCHOA,

Plaintiff,

Case No. 3:14-cv-432-RCJ-WGC

v.

RENEE BAKER et al.,

Defendants.

ORDER

**I. DISCUSSION**

Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1-1). Plaintiff has not submitted an application to proceed *in forma pauperis* and has not paid the full filing fee for this case. On at least three (3) occasions, the Court has dismissed civil actions commenced by Plaintiff while in detention as frivolous or for failure to state a claim upon which any relief may be granted.<sup>1</sup>

Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and, instead, must pay the full \$350.00 filing fee and the \$50

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<sup>1</sup> See *Ochoa v. Cook et al.*, 3:02-cv-450-LRH-VPC; *Ochoa v. Willis et al.*, 3:02-cv-545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter et al.*, 3:10-cv-364-HDM-RAM (dismissed as delusional and factually frivolous). The Court takes judicial notice of its prior records in the above matters.

1 administrative fee in advance unless he is “under imminent danger of serious physical  
2 injury.” 28 U.S.C. § 1915(g).

3 In his complaint, Plaintiff appears to allege his dissatisfaction with the prison  
4 food. (See *generally* ECF No. 1-1). The Court finds that these allegations fail to  
5 plausibly allege that Plaintiff is in imminent danger of serious physical injury. See  
6 *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception  
7 to § 1915(g) applies if the complaint makes a plausible allegation that the prisoner faced  
8 imminent danger of serious physical injury at the time of filing). To the extent that  
9 Plaintiff is alleging that prison officials are poisoning his food, the Court notes that  
10 Plaintiff has filed several complaints in the past making those same allegations and that  
11 the Court finds that such allegations are delusional and factually frivolous. As such,  
12 Plaintiff must pre-pay the \$350.00 filing fee and the \$50 administrative fee in full.

13 **II. CONCLUSION**

14 For the foregoing reasons, it is ordered that this action will be dismissed without  
15 prejudice unless Plaintiff pays the \$350.00 filing fee and the \$50 administrative fee in  
16 full within thirty (30) days of entry of this order.

17 It is further ordered that the Clerk of the Court shall send Plaintiff two copies of  
18 this order. Plaintiff shall make the necessary arrangements to have one copy of this  
19 order attached to the check paying the filing fee and the administrative fee.

20 It is further ordered that the Clerk of the Court shall retain the complaint (ECF No.  
21 1-1).

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23 DATED: This 9th day of September, 2014.

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